

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAZORAL, S.A.,	:	
	:	
Plaintiff,	:	
	:	04 Civ. 3313 (TPG)
- against -	:	
	:	<u>OPINION</u>
THE REPUBLIC OF ARGENTINA,	:	
	:	
Defendant.	:	
-----X	:	

Plaintiff is the beneficial owner of certain bond indebtedness issued by defendant The Republic of Argentina. The Republic defaulted on such indebtedness in December 2001 during a profound fiscal crisis. Plaintiff is suing to recover amounts due to them as a result of the default and have moved for summary judgment. Plaintiff also moves to strike the Republic's discovery requests.

The motions are granted.

FACTS

The bond indebtedness at issue is governed by one of three agreements: (1) a Fiscal Agency Agreement dated October 19, 1994 (the "1994 FAA"), (2) a Fiscal Agency Agreement dated December 10, 1993 (the "1993 FAA"), and (3) a Floating Rate and Bond Exchange Agreement dated December 6, 1992 (the "FRB Agreement"). The 1994 FAA is the same agreement that governed the

bond indebtedness on which this court granted summary judgment to the plaintiffs in Lightwater Corporation Ltd. v. Republic of Argentina, No. 02 Civ. 3804, 2003 WL 1878420 (S.D.N.Y. Apr. 14, 2003). Section 22 of the 1994 FAA, Section 20 of the 1993 FAA, and Section 6.07 of the FRB Agreement state that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the borough of Manhattan in the City of New York. All three agreements provide that the Republic's obligations on the bonds are unconditional and that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is an event of default as well. Paragraph 12 of the 1994 FAA provides for acceleration of principal if there is a failure to pay interest or a moratorium. If either of these events occurs,

each holder of Securities and such Series may by such notice in writing declare the principal amount of Securities of such Series held by it to be due and payable immediately

The 1993 FAA contains similar language.

The FRB Agreement permits acceleration of principal only by holders of at least 25% in aggregate of the outstanding principal amount of the bonds under each agreement.

On December 24, 2001 the Republic declared a moratorium on payments of principal and interest on the external debt of the Republic. The court refers

to its previous opinions for a description of the circumstances of these defaults. Lightwater, 2003 WL 1878420, at *2; Applestein v. Republic of Argentina, No. 02 Civ. 1773, 2003 WL 1990206, at *1 (S.D.N.Y. Apr. 29, 2003). On February 3 and February 4, 2004, plaintiff sent notices to Bankers Trust Company, the Fiscal Agent of The Republic of Argentina, declaring the principal amounts of the debt securities governed by the 1994 FAA and 1993 FAA held by plaintiff to be immediately due and payable.¹

The bonds that are the subject of this action are listed hereafter. Also listed are the amounts of the beneficial interests owned by plaintiff.²

The following tables contain the necessary identifying information regarding plaintiff's beneficial interests in bonds.

¹ The court so finds notwithstanding the typographical error in one of the letters.

² The court notes the distinction between bonds and beneficial interests. In some previous opinions, the court has simply referred to the plaintiffs as owners of "bonds," when in fact plaintiffs are technically owners of "beneficial interests in bonds." The Republic actually issues "a bond" to a depository. The depository, in some form, issues "participations" to brokers, who sell "beneficial interests" to purchasers. These beneficial interests are identified by reference to the underlying bond (CUSIP or ISIN number or both; date of issuance and maturity; rate of interest) and the principal amount of the beneficial interest. This distinction is discussed more fully in Million Air Corp. v. Republic of Argentina, No. 04 Civ. 1048, 2005 U.S. Dist. LEXIS 23904 (S.D.N.Y. Oct. 17, 2005).

Table 1.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 1,310,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AN0; ISIN No. US04114AN02
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	October 9, 2006.
<u>Interest Rate/Payable:</u>	11 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 2.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 50,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AR1; ISIN No. US04114AR16
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	January 30, 2017.
<u>Interest Rate/Payable:</u>	11.375 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 3.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 100,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114BE9; ISIN No. US04114BE93
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	April 7, 2009.
<u>Interest Rate/Payable:</u>	11.75 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 4.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 550,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114GF1; ISIN No. US04114GF14
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	December 19, 2008.
<u>Interest Rate/Payable:</u>	15.5 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 5.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 200,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114GG9; ISIN No. US04114GG96
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	June 19, 2018.
<u>Interest Rate/Payable:</u>	12.25 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 6.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 968,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AZ3; ISIN No. US04114AZ32
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	December 4, 2005.
<u>Interest Rate/Payable:</u>	11%
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 7.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 1,492,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AV2; ISIN No. US04114AV28
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	September 19, 2027.
<u>Interest Rate/Payable:</u>	9.75 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 8.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 1,700,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114GH7; ISIN No. US04114GH79
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	June 19, 2031.
<u>Interest Rate/Payable:</u>	12 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 9.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 170,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114GD6; ISIN No. US04114GD65
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	February 21, 2012.
<u>Interest Rate/Payable:</u>	12.375 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 4, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 10.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 13,423,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AH3; ISIN No. US04114AH34
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	December 20, 2003.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	February 3, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

Table 11.

<u>Plaintiff Beneficial Owner:</u>	Mazoral, S.A.
<u>Face Value:</u>	U.S. \$ 250,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. XS0043120582
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	March 31, 2005.
<u>Interest Rate/Payable:</u>	Floating Interest Rate.
<u>Date Of Purchase:</u>	Not provided.
<u>Acceleration:</u>	N/A.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FRB Agreement dated December 6, 1992.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statements: Safra National Bank of New York dated November 30, 2004 and UBS dated November 2004.

DISCUSSION

This Court has already granted summary judgment in other cases to plaintiffs seeking to collect on the Republic's defaulted bonds issued under the 1994 FAA, the 1993 FAA and the FRB Agreement. This has occurred in Lightwater, supra, Mazzini v. Republic of Argentina, No. 03 Civ. 8120, 2005 U.S. Dist. LEXIS 5692 (S.D.N.Y. Mar. 31, 2005), and other cases. Only certain specific issues need to be discussed in connection with the present motion.

Standing and Proof of Ownership

In the two opinions in Fontana v. Republic of Argentina, 415 F.3d 238 (2d Cir. 2005), and Applestein v. Province of Buenos Aires, 415 F.3d 242 (2d Cir. 2005), the Second Circuit has held that an owner of a beneficial interest, such as plaintiff here, must receive authorization from the registered holder of the bond before it may sue, but that such authorization may be granted subsequent to the filing of a lawsuit. Alternatively, the Republic may waive the authorization requirement.

The Republic has agreed to waive objections based on lack of authorization where the court makes a finding of current ownership. See Transcript, March 28, 2006, Cilli v. Republic of Argentina (04 Civ. 6594).

Here, plaintiff has adequately demonstrated through its account statements that it owned the beneficial interests as of November 2004. There is no evidence of any change of ownership thereafter.

CONCLUSION

The motion to strike defendant's discovery requests is granted.

Plaintiff's motion for summary judgment is granted. Judgment will be entered for the principal amount of the bonds issued under the 1993 FAA and 1994 FAA plus accrued interest. With respect to the bonds issued under the FRB Agreement, judgment will be entered for any payments on those bonds that are due and unpaid as of the time of judgment.

The parties shall consult with one another concerning the form of the judgment and the amounts of interest that should be awarded in the judgment. If the parties are unable to reach agreement on those subjects, they shall jointly submit an agreed proposed judgment to the court. If the parties are unable to reach agreement on those subjects, plaintiff shall submit a proposed judgment to the court, and the Republic shall submit any objections to plaintiff's proposed judgment within five business days thereafter. The court will then resolve any remaining disagreements.

SO ORDERED.

Dated: New York, New York
May 4, 2006

A handwritten signature in cursive script, reading "Thomas P. Griesa". The signature is written in dark ink and is positioned above a horizontal line.

THOMAS P. GRIESA
U.S.D.J.